

H.E. NO. 2010-5

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Charging Party,

-and-

Docket No. CE-2009-010

TEAMSTERS LOCAL 97,

Respondent.

SYNOPSIS

A Hearing Examiner denies the Borough of Paramus' motion for summary judgment on the ground that the pleadings raise issues of material fact. The Hearing Examiner declined to strike the International Brotherhood of Teamsters, Local 97's Answer as it substantially complied with N.J.A.C. 19:14-3.1.

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Appearances:

For the Charging Party  
Herten, Burstein, Sheridan, Cevasco, Bottinelli, Litt &  
Harz, L.L.C.  
(Daniel C. Ritson, of Counsel)

For the Respondent  
Mets, Schiro & McGovern, LLP  
(Roosevelt Porter, of Counsel)

**HEARING EXAMINER'S DECISION ON MOTION**  
**FOR SUMMARY JUDGMENT**

On May 18, 2009, the Borough of Paramus (Borough) filed an unfair practice charge against the International Brotherhood of Teamsters, Local 97 (Local 97). The charge alleges that Local 97 violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-5.4b(3) and (4)<sup>1/</sup>, by negotiating in bad faith

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<sup>1/</sup> These provisions prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement (continued...)"

for a new contract, specifically, in making misrepresentations during negotiations and fraudulently inducing the Borough to execute a successor contract. A Complaint and Notice of Hearing was issued by the Director of Unfair Practices on September 24, 2009. A hearing in this matter is scheduled for March 31, 2010.

Local 97 attempted to file its Answer on October 8, 2009, but the Commission's copies were returned as undeliverable. Local 97 contacted me and requested an extension of time to file its Answer which I granted. I received the Answer on October 27, 2009. No evidence suggests that the Borough did not receive its copy of the Answer on or around October 8, 2009.

On November 13, 2009, the Borough filed a motion for summary judgment together with an affidavit of its labor counsel and a brief. The motion was referred to me for disposition on January 14, 2010. N.J.A.C. 19:14-4.8(a).

In its motion, the Borough contends that Local 97's Answer should not be accepted because it does not comply with Commission rule, N.J.A.C. 19:14-3.1, in that it does not specifically deny material allegations contained in the Complaint and is not certified. The Borough maintains that all of the allegations in the Complaint should be deemed admitted as true and that a decision in its favor should be issued as a matter of law. It

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1/ (...continued)  
to writing and to sign such agreement."

seeks as a remedy that the successor labor agreement entered into by the parties in 2008 should be voided.

After receiving notice of the Borough's motion for summary judgment on or about November 13, 2009, Local 97 filed a modified Answer to the Complaint on November 20, 2009. The modified Answer is identical to the original Answer except that it includes a signed certification in accordance with N.J.A.C. 19:14-3.1.

On November 30, 2009, Local 97 filed a brief opposing the motion for summary judgment. In its brief, Local 97 asserts that it cured any deficiency in its Answer by providing a certification, that its Answer denies material allegations in the Complaint and provides affirmative defenses. It asks that the Borough's motion be denied.

The Borough requested and was granted leave to file a reply brief. Its reply was filed on December 17, 2009.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(e); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). In determining whether summary judgment is appropriate, we must view the evidence submitted in connection with the motion in the light most favorable to the party opposing the motion. The summary judgment

procedure is not to be used as a substitute for a plenary trial.

Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); UMDNJ,

P.E.R.C. No. 2006-51, 32 NJPER 12 (¶16 2006).

Our rule regulating the filing of an answer provides:

Within 10 days of service on it of the complaint, the respondent shall file an answer. The hearing examiner, upon proper cause shown, may extend the time for filing an answer. The answer shall specifically admit, deny or explain each of the allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a specific denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the hearing examiner and the Commission unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses. The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: 'I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief.' N.J.A.C. 19:14-3.1.

Commission rules are to be liberally construed to prevent injustices and to effectuate the purposes of the Act. N.J.A.C. 19:10-3.1.

Here, the Borough urges that Local 97's Answer be struck, the allegations contained in the Complaint be admitted as true and summary judgment be granted to the Borough. It objects to the Answer on two grounds: (1) that the original Answer was not

certified and (2) certain material allegations should be deemed admitted because the Answer inadequately denies them.

For the following reasons I decline to strike Local 97's Answer and deny the Borough's motion for summary judgment. With regard to the Answer initially not being certified, Local 97 promptly cured this deficiency once it realized the oversight. To disallow the Answer in its entirety on this ground alone would work an injustice. N.J.A.C. 19:10-3.1.

The Borough also objects to certain responses in the Answer and seeks to have its own allegations deemed admitted as true. In particular, it objects to Local 97's answer to the last sentence in paragraph 2 and the first 5 sentences in paragraph 3 of the Complaint. In each instance, the answer provides that "Local 97 does not have sufficient knowledge to either admit or deny the allegations set forth. . ." The Borough questions the veracity of the statements.

The allegations of the charge are written in unnumbered paragraphs. Some of the paragraphs are long. The Answer provides a sentence-by-sentence response and affirmative defenses. It specifically denies several allegations, such as sentences 6, 7, 9, 10 and 11 of paragraph 3, raising issues of material fact (whether the parties had agreement on working an 8 hour day). For that reason alone, I deny the Borough's motion for summary judgment.

As for those allegations set forth in the Complaint that Local 97 asserts it is without knowledge to admit or deny, I will treat them as being denied as opposed to as admitted as urged by the Borough. N.J.A.C. 19:14-3.1. The Borough will have the opportunity at a plenary hearing to present competent evidence to support its allegations and by extension disprove Local 97's responses.

The Borough received Local 97's certified Answer on or about November 20, 2009, well in advance of the scheduled March 31, 2010 hearing. It has had ample time to prepare its case. The Answer substantially complies with Commission rules. See, City of Newark, P.E.R.C. No. 88-84, 14 NJPER 243 (¶19089 1987), (where an informal position statement was an acceptable answer). Resultantly, the parties' filings present disputed material facts. Accordingly, the Borough's motion for summary judgment must be denied. N.J.A.C. 19:14-4.8(e); Brill v. Guardian Life Ins. Co. of America.

ORDER

The motion for summary judgment is denied.



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Perry O. Lehrer  
Hearing Examiner

DATED: February 18, 2010  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-4.8(e) this ruling may only be appealed to the Commission by special permission in accordance with N.J.A.C. 19:14-4.6.

Any request for special permission to appeal is due by March 1, 2010.